
FINAL SUPPLEMENTAL ENVIRONMENTAL ASSESSMENT (12-052)

*ADDITIONAL POINT OF DELIVERY FOR BYRON BETHANY IRRIGATION
DISTRICT'S NON-CENTRAL VALLEY PROJECT WATER TO WESTLANDS WATER
DISTRICT*

Appendix A Set 1 (pages 1 to 25)

Byron Bethany Irrigation District's Warren Act Contract

June 2012

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Delta Division, Central Valley Project, California
TEMPORARY CONTRACT BETWEEN THE UNITED STATES
AND
BYRON-BETHANY IRRIGATION DISTRICT
PROVIDING FOR MULTI-YEAR STORAGE AND
CONVEYANCE OF NON-PROJECT WATER
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17 [2nd] WHEREAS, the Contractor asserts a right to a Non-Project Water supply
18 for Irrigation and Municipal and Industrial (M&I) purposes through its interest in its Old River
19 Pre-1914 Water Rights located at Clifton Court Forebay and has requested the United States
20 Store and Convey said Non-Project Water through Excess Capacity in the Delta-Mendota Canal
21 and associated facilities' features of the Delta Division, including the San Luis Reservoir, Central
22 Valley Project, California; and

23 [3rd] WHEREAS, the United States is willing to Convey said Non-Project
24 Water to the Contractor through Excess Capacity in said Project Facilities in accordance with the
25 terms and conditions hereinafter stated; and

26 NOW, THEREFORE, in consideration of the covenants herein contained, the
27 parties agree as follows:

28 DEFINITIONS

29 1. When used herein unless otherwise distinctly expressed, or manifestly
30 incompatible with the intent of the parties as expressed in this Contract, the term:

31 (a) "Calendar Year" shall mean the period January 1 through December 31, both
32 dates inclusive;

33 (b) "Contracting Officer" shall mean the Secretary of the Interior's duly
34 authorized representative acting pursuant to this Contract or applicable Reclamation law or
35 regulation;

36 (c) "Contractor's Boundaries" shall mean the geographic area within which
37 the Contractor is authorized to serve Non-Project Water as set forth on Exhibit A, which
38 may be modified in accordance with Article 24, without amendment of this Contract;

39 (c.1) “Conveyance or Convey” shall mean the transportation of Non-Project
40 Water in Project Facilities;

41 (d) “Eligible Lands” shall mean all lands to which Irrigation Water may be
42 delivered in accordance with Section 204 of the RRA;

43 (e) “Excess Capacity” shall mean capacity in the Project Facilities in excess
44 of that needed to meet the Project’s authorized purposes, as determined solely by the
45 Contracting Officer, which may be made available for Storage and Conveyance and
46 delivery of Non-Project Water;

47 (f) “Full-Cost Lands” shall mean landholdings described in Sections
48 205(a)(3) and 202(3) of the RRA;

49 (g) “Incremental Fee” shall mean the fee, as set forth in Exhibit B, to be paid
50 to the United States pursuant to the acreage limitation provisions of the Federal
51 Reclamation laws for Non-Project Water Conveyed through Project Facilities that will be
52 used to irrigate Ineligible Lands;

53 (h) “Ineligible Lands” shall mean all lands to which Irrigation Water may not
54 be delivered in accordance with Section 204 of the RRA;

55 (i) “Irrigation Water” shall mean Non-Project Water that is used primarily in
56 the commercial production of agricultural crops or livestock, including domestic use
57 incidental thereto. Irrigation Water shall not include water used for purposes such as the
58 watering of landscaping or pasture for animals (e.g., horses) which are kept for personal
59 enjoyment or water delivered to landholdings operated in units of less than 5 acres, unless
60 the Contractor establishes to the satisfaction of the Contracting Officer that the use of
61 water delivered to such landholding is a use described in this subdivision of this Article;

62 (j) “Municipal and Industrial Water” or “M&I Water” shall mean Non-
63 Project Water that is made available for purposes other than the commercial production
64 of agricultural crops or livestock, including domestic use incidental thereto. M&I Water
65 shall include water for human use and purposes such as the watering of landscaping or
66 pasture for animals (e.g. horses) which are kept for personal enjoyment or water delivered
67 to landholdings operated in units of less than 5 acres;

68 (k) “Non-Project Water” shall mean water acquired by or available to the
69 Contractor from the source(s) identified in Exhibit C that has not been appropriated by
70 the United States;

71 (l) “Operating Non-Federal Entity” shall mean the non-federal entity that has
72 the obligation pursuant to a separate agreement with the United States to operate and
73 maintain all or a portion of the Project Facilities, and which may have funding obligations
74 with respect thereto;

75 (m) “Project” shall mean the Central Valley Project, owned by the United
76 States and managed by the Department of the Interior, Bureau of Reclamation;

77 (n) “Project Facilities” shall mean the Delta-Mendota Canal and associated
78 facilities, constructed as features of the Delta Division, including the San Luis Reservoir,
79 Central Valley Project, California;

80 (o) “Rates” shall mean the Annual amount to be paid to the United States by
81 the Contractor, as set forth in Exhibit B, for the use of Excess Capacity in the Project
82 Facilities made available, for Storage and Conveyance, pursuant to this Contract, which
83 recognizes a use-of-facilities charge;

84 (p) "RRA" shall mean the Reclamation Reform Act of October 12, 1982 (96
85 Stat. 1263), as amended;

86 (q) "Secretary" shall mean the Secretary of the Interior, a duly appointed
87 successor, or an authorized representative acting pursuant to any authority of the Secretary
88 and through any agency of the Department of the Interior;

89 (q.1) "Storage, Store, or Stored" shall mean the introduction and retention of
90 Non-Project Water in Project Facilities for a period greater than 30 days;

91 (r) "Year, Annual, Annually, or Annum" shall mean the period from and
92 including the effective date of this Contract, through the last day of the 12th consecutive
93 month immediately following.

94 TERM OF CONTRACT

95 2. This Contract shall become effective on **March 1, 2010**, and shall remain in effect
96 through **February 28, 2015**; *Provided*, That upon written notice to the Contractor, this Contract
97 may be terminated by the Contracting Officer at an earlier date if the Contracting Officer
98 determines that the Contractor has not been complying with one or more terms or conditions of
99 this Contract.

100 INTRODUCTION, STORAGE AND CONVEYANCE, AND DELIVERY
101 OF NON-PROJECT WATER

102 3. (a) During the term of this Contract, the Contractor may introduce into Project
103 Facilities within each Year, up to **5,000** acre-feet of Non-Project Water from the source(s)
104 identified in Exhibit C from the Intake Channel to the California Aqueduct Banks Pumping
105 Plant. The United States or the designated Operating Non-Federal Entity shall Store in and/or
106 Convey through Excess Capacity in the Project Facilities, the Non-Project Water for delivery to
107 the Contractor from said point(s) of introduction at the Intake Channel to the California

108 Aqueduct Banks Pumping Plant and/or at said point(s) of delivery where the Contractor's
109 diversion is located. The introduction of Non-Project Water into Project Facilities must be
110 consistent with the authorized season of diversion, the maximum quantity and/or diversion rate
111 of Non-Project Water, and the authorized purpose-of-use of Non-Project Water under the
112 asserted water right(s) identified in Exhibit C.

113 (a.1) Introduction and delivery point(s) must be mutually agreed to in writing
114 by the Contracting Officer and the Contractor, in accordance with an approved schedule
115 submitted by the Contractor pursuant to subdivision (d) of this Article: Provided, That the
116 Annual quantity of Non-Project Water to be Stored for and/or Conveyed to the Contractor in or
117 through Project Facilities shall not exceed the quantity of Non-Project Water previously
118 introduced into the Project Facilities by the Contractor, less **five** percent for losses.

119 (a.2) The Annual loss percentage is applied to all Non-Project Water introduced
120 into the Project Facilities during the then-current Year. The intent is that the loss percentage is
121 applied only once to an identified quantity of Non-Project Water and that at no time shall the loss
122 percentage be applied to the same block of Non-Project Water more than once.

123 (b) Exhibit C may be modified or replaced by mutual agreement of the
124 Contractor and the Contracting Officer to reflect changes to the source(s) of Non-Project without
125 amendment of this Contract: Provided, however, That no such modification or replacement shall
126 be approved by the Contracting Officer absent all appropriate environmental documentation,
127 including but not limited to documents prepared pursuant to the National Environmental Policy
128 Act of 1969 (NEPA) and the Endangered Species Act of 1973 (ESA), as amended.

129 (c) All Non-Project Water Stored and/or Conveyed for and delivered to the
130 Contractor pursuant to this Contract shall be used for irrigation and M&I.

131 (d) At the beginning of each Year and prior to the release of Non-Project
132 Water from Project Facilities or introduction into Project Facilities, the Contractor shall submit
133 appropriate schedule(s) to the Contracting Officer and the designated Operating Non-Federal
134 Entity showing the estimated quantities of Non-Project Water to be released from or introduced
135 into the Project Facilities, during the then-current Year, for all Non-Project Water subject to this
136 Contract. Such schedule(s) shall include the estimated time(s) for Storing, Conveying, and/or
137 delivering said Non-Project Water in or through Project Facilities for the then-current Year. The
138 Non-Project Water that will be introduced, Stored, and/or Conveyed in and through Project
139 Facilities is subject to the authorized season of diversion, the maximum quantity and/or diversion
140 rate, and the authorized purpose-of-use as shown under the Contractors asserted water right(s)
141 identified in Exhibit C.

142 (d.1) The Contractor is required to initially schedule, at the beginning of each
143 Year, the Storage and Conveyance and delivery of the maximum quantity of Non-Project Water
144 for which the Contractor desires Storage and Conveyance during the then-current Year or for the
145 duration of this Contract when scheduling at the beginning of the final Year of this Contract.
146 The initial schedule in any Year and any revision(s) thereof shall be in a form acceptable to the
147 Contracting Officer and shall be submitted at such times and in such manner as determined by
148 the Contracting Officer. The Contractor shall not introduce Non-Project Water into the Project
149 Facilities unless and until the Annual schedule(s) and any revision(s) thereof have been
150 approved, in writing, by the Contracting Officer.

151 (e) All Non-Project Water remaining in the Project Facilities at the end of a
152 Year, shall incur Annually, the appropriate Rates, costs, and/or fees pursuant to Exhibit "B" of
153 this Contract, which shall be updated Annually. All Non-Project Water either released from or

154 Conveyed through Project Facilities upon the Contractor's request and is not accepted by the
155 Contractor within 30 days after such release or Conveyance, shall be deemed to be unused water
156 donated to the United States for Project purposes.

157 (e.1) All Non-Project Water remaining in Project Facilities at Contract
158 termination, shall be deemed to be unused water donated to the United States for Project
159 purposes unless, the Contractor has requested, in writing, a subsequent contract instrument at
160 least 90 days prior to termination of this Contract.

161 (e.2) In the event that Federal share of San Luis Reservoir fills and capacity is
162 no longer available for the Non-Project Water, the Non-Project Water currently in the Federal
163 share of San Luis Reservoir shall be deemed to be the first water spilled: *Provided*, That the
164 Contracting Officer will to the extent possible inform the Contractor by written notice, or
165 otherwise, of any impending spill from the Federal share of San Luis Reservoir.

166 (f) Unless otherwise agreed to in writing by the Contracting Officer, the Non-
167 Project Water shall be released from Storage, Conveyed, and delivered to the Contractor through
168 existing Project Facilities.

169 (g) The introduction, Storage, Conveyance, release, and delivery of Non-
170 Project Water pursuant to this Contract will not be supported with Project-use energy. If
171 electrical power is required to pump the Non-Project Water into, through or from the Project
172 Facilities, the Contractor shall be responsible for the acquisition and payment of all electrical
173 power and associated transmission service charges.

174 (h) The Contractor shall have no rights to any benefits from increased power
175 generation from Non-Project Water moving through Federally-owned electric power generators
176 at Project Facilities or to any benefits that may result due to additional head at Project Power

177 Facilities as a result of the Storage and Conveyance of Non-Project Water in the Project
178 Facilities authorized pursuant to this Contract.

179 (i) The introduction of Non-Project Water into the Project Facilities by the
180 Contractor shall be conditioned upon but not limited to: (i) compliance by the Contractor with
181 the environmental measures described in the environmental documentation prepared in
182 connection with the execution of this Contract; and (ii) with the terms of the applicable
183 operations' procedures approved by the Contracting Officer.

184 MEASUREMENT OF NON-PROJECT WATER

185 4. (a) All Non-Project Water shall be measured and recorded at the point(s) of
186 introduction and point(s) of delivery established pursuant to Article 3 herein with measurement
187 devices acceptable to the Contracting Officer and the methods used to make such measurements
188 shall be in accordance with sound engineering practices.

189 (b) Unless otherwise agreed to in writing by the Contracting Officer, the
190 Contractor, at its own cost and expense, shall be responsible for providing, installing, operating,
191 maintaining, repairing, and replacing all measurement devices required under this Contract in
192 accordance with any right-of-use agreement(s) or other requisite authorization(s) issued by the
193 United States. The Contractor shall be responsible for all costs associated with the issuance of
194 such right-of-use agreement(s) and authorization(s).

195 (c) The Contractor shall maintain accurate records of the quantity of Non-
196 Project Water, expressed in acre-feet, introduced into and delivered from Project Facilities at said
197 authorized point(s) of introduction and delivery and shall provide such records to the Contracting
198 Officer and the Operating Non-Federal Entity at such times and in such manner as determined by
199 the Contracting Officer.

200 (d) Upon the request of either party to this Contract, the Contracting Officer
201 shall investigate, or cause to be investigated by the Operating Non-Federal Entity, the accuracy
202 of all measurements of Non-Project Water required by this Contract. If the investigation
203 discloses errors in the recorded measurements, such errors shall be promptly corrected. If the
204 investigation discloses that measurement devices are defective or inoperative, the Contracting
205 Officer shall take any necessary actions to ensure that the responsible party makes the
206 appropriate adjustments, repairs, or replacements to the measurement devices. In the event the
207 Contractor, as the responsible party, neglects or fails to make such adjustments, repairs, or
208 replacements to the measurement devices within a reasonable time and to the reasonable
209 satisfaction of the Contracting Officer, the Contracting Officer may cause such adjustments,
210 repairs, or replacements to be made and the costs thereof shall be charged to the Contractor and
211 the Contractor shall pay said charges to the United States immediately upon receipt of a detailed
212 billing therefor. For any period of time during which accurate measurements of the Non-Project
213 Water have not been made, the Contracting Officer shall consult with the Contractor and the
214 Operating Non-Federal Entity prior to making a determination of the quantity of Non-Project
215 Water delivered for that period of time and such determination by the Contracting Officer shall
216 be final and binding on the Contractor.

217 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

218 5. (a) The operation and maintenance of a portion of the Project Facilities to be
219 used to Convey and deliver the Non-Project Water to the Contractor, and responsibility for
220 funding a portion of the costs of such operation and maintenance, have been transferred from the
221 United States to the San Luis & Delta-Mendota Water Authority, the designated Operating Non-
222 Federal Entity, pursuant to a separate agreement, identified as Contract No. 8-07-20-X0354,

223 dated February 18, 2003 (Agreement), as amended. That separate Agreement shall not interfere
224 with or affect the asserted rights or obligations of the Contractor or the United States hereunder.

225 (b) The Contractor shall pay directly to the San Luis & Delta-Mendota Water
226 Authority, or to any successor approved by the Contracting Officer under the terms and
227 conditions of the separate Agreement described in subdivision (a) of this Article, all Annual
228 Rates, costs, fees, charges or assessments of any kind, including any assessment for reserve
229 funds, that the San Luis & Delta-Mendota Water Authority or such successor determines, sets, or
230 establishes for the operation and maintenance of that portion of the Project Facilities operated
231 and maintained by the San Luis & Delta-Mendota Water Authority or such successor.

232 (c) For so long as the operation and maintenance of any portion of the Project
233 Facilities used to Convey and deliver the Non-Project Water to the Contractor is performed by
234 the San Luis & Delta-Mendota Water Authority, or any successor thereto, the Contracting
235 Officer shall adjust those components of the Rates for the Non-Project Water Conveyed under
236 this Contract by deleting the costs associated with the activity being performed by the San Luis
237 & Delta-Mendota Water Authority or its successor.

238 (d) In the event the United States reassumes operation and maintenance of any
239 portion of the Project Facilities from the Operating Non-Federal Entity, the Contracting Officer
240 shall so notify the Contractor, in writing, and shall revise the Rates on Exhibit B to include those
241 costs associated with the operation and maintenance activities reassumed by the United States.
242 The Contractor shall, thereafter, in the absence of written notification from the Contracting
243 Officer to the contrary, pay the Rates, specified in the revised Exhibit B directly to the United
244 States in compliance with Article 6 of this Contract.

245 ANNUAL PAYMENTS AND ADJUSTMENTS

246 6. (a) Upon execution of this Contract and for the duration of the term of this
247 Contact, the Contractor shall have an executed letter of agreement with the Contracting Officer to
248 among other things, allow for payment in advance of all costs to be incurred by Reclamation
249 while administering this Contract.

250 (b) The Contractor shall submit an Annual schedule and revision(s) thereto as
251 required pursuant to subdivision (d) of Article 3 herein. The Contractor shall make an advance
252 payment to the United States 30 days prior to Storage and/or Conveyance of Non-Project Water
253 which shall equal to the total amount payable pursuant to the applicable Rates, fees, and costs
254 shown on Exhibit B (as updated Annually) for each acre-foot of Non-Project Water: (i) to be
255 introduced into, Stored in, and/or Conveyed through the Project Facilities for the then-current
256 Year; *Provided*, That where the Contractor's schedule provides for multiple introductions of
257 Non-Project Water for Storage and Conveyance, advance payment may be made in increments
258 corresponding to the amount of each scheduled introduction; and (ii) each acre-foot of Non-
259 Project Water remaining in Storage from the previous Year. Non-Project Water shall not be
260 introduced into, Stored in, and/or Conveyed through Project Facilities by the Contractor prior to
261 such advance payment being received by the United States.

262 (c) In the event the Annual quantity of Non-Project Water delivered to the
263 Contractor exceeds the quantity of Non-Project Water introduced previously pursuant to
264 subdivision (a) of Article 3 herein, that additional amount of water shall be deemed Project water
265 delivered to the Contractor, and an equivalent quantity of Project water shall be deducted from
266 the Contractor's Project water supply available thereafter under that certain "Long-Term
267 Renewal Contract Between the United States and Byron-Bethany Irrigation District Providing for

268 Project Water Service,” designated Contract No. 14-06-200-785-LTR1, dated July 25, 2005
269 (Water Service Contract), and payment shall be made at the applicable rate identified on Exhibit
270 **B** of the said Water Service Contract. The provisions of this subdivision are not exclusive and
271 shall not bind the United States from exercising any other remedy, including the early
272 termination of this Contract pursuant to Article 2 of this Contract.

273 (d) The amount of any overpayment by the Contractor determined by the
274 Contracting Officer shall be applied first to any accrued indebtedness arising out of this Contract
275 then due and owing to the United States by the Contractor. Any amount of such overpayment
276 then remaining shall be refunded to the Contractor: *Provided, however,* That no refund shall be
277 made by the United States to the Contractor for any quantity of Non-Project Water deemed to be
278 unused water donated to the United States for Project purposes pursuant to subdivision (e) of
279 Article 3 herein nor for the administrative charge required pursuant to subdivision (a) of this
280 Article.

281 (e) All Annual payments made by the Contractor pursuant to subdivision (b)
282 of this Article shall be covered into the Reclamation Fund pursuant to Section 3 of the Act of
283 February 21, 1911 (36 Stat. 925).

284 (f) The Annual payment of the Rates set forth in this Article for the use of
285 Excess Capacity is exclusive of O&M costs to be paid directly to the Operating Non-Federal
286 Entity by the Contractor, and any additional charges that the Contractor may assess its water
287 users. In accordance with the Act of February 21, 1911 (36 Stat. 925), the Contractor may not
288 impose on its water users any charge for the use of Excess Capacity that exceeds the amount paid
289 to the United States and to the Operating Non-Federal Entity: *Provided,* That the Contractor may
290 also charge its water users such additional amounts as are necessary to cover the Contractor’s

291 reasonable administrative costs in contracting with the United States for the use of Excess
292 Capacity in the Project Facilities.

293 MEDIUM FOR TRANSMITTING PAYMENTS

294 7. (a) All payments from the Contractor to the United States under this Contract
295 shall be by the medium requested by the United States on or before the date payment is due. The
296 required method of payment may include checks, wire transfers, or other types of payment
297 specified by the United States.

298 (b) Upon execution of the Contract, the Contractor shall furnish the
299 Contracting Officer with the Contractor's taxpayer's identification number (TIN). The purpose
300 for requiring the Contractor's TIN is for collecting and reporting any delinquent amounts arising
301 out of the Contractor's relationship with the United States.

302 EXCESS CAPACITY

303 8. (a) The availability of Excess Capacity shall be determined solely by the
304 Contracting Officer. Nothing contained in this Contract shall limit or preclude the United States
305 from utilizing available capacity in the Project Facilities for the Storage and Conveyance of
306 Project water pursuant to Federal law, Reclamation law or policy, and existing contract(s); or (2)
307 for using Excess Capacity in the Project Facilities for the introduction, Storage, and Conveyance,
308 and delivery of any other supplies of Non-Project Water.

309 (b) The Contracting Officer and the Operating Non-Federal Entity shall not be
310 obligated to Convey Non-Project Water during periods of maintenance or for other operating
311 requirements.

312 (c) If at any time during the Year, the Contracting Officer determines that
313 there will not be Excess Capacity in the Project Facilities sufficient to allow the Non-Project
314 Water to be introduced, Stored, Conveyed, or delivered in accordance with the approved
315 schedule submitted previously by the Contractor, the Contracting Officer shall so notify the

316 Contractor in writing. Within 24 hours of said notice, the Contractor shall revise and resubmit its
317 schedule accordingly.

318 (d) No provision of this Contract shall be construed in any way as a basis for
319 the Contractor to establish a priority to or a permanent right to the use of Excess Capacity in the
320 Project Facilities nor to set a precedent to obligate the United States to enter into contracts with
321 any other entities or individuals for the Conveyance or Storage of Non-Project Water.

322 ACREAGE LIMITATION PROVISIONS

323 9. (a) The Non-Project Water Stored and/or Conveyed pursuant to this Contract
324 cannot be furnished to irrigate more than 160 acres of Eligible Lands owned directly or indirectly
325 by any one person unless that person has become subject to the discretionary provisions of the
326 RRA. The Rates for furnishing Non-Project Water to irrigate such Eligible Lands are identified
327 as Irrigation Cost of Service, RRA Full Cost 202(3), and RRA Full Cost 205(a)(3) on Exhibit B.

328 (b) The Non-Project Water Stored and/or Conveyed pursuant to this Contract
329 can be furnished to Ineligible Lands only if the Contractor pays the Incremental Fee specified on
330 Exhibit B.

331 RECEIPT AND DISTRIBUTION OF NON-PROJECT WATER--
332 SALE, TRANSFER, OR EXCHANGE OF NON-PROJECT WATER

333 10. (a) The parties hereto acknowledge that this Contract does not grant any
334 permission or entitlement to the Contractor to extract and/or divert Non-Project Water from the
335 source(s) described on Exhibit C or to change the nature or place of use of its asserted rights to
336 said Non-Project Water in any way. It is the responsibility of the Contractor to comply with all
337 applicable Federal, State, and local laws, including, but not limited to, State water law in relation
338 to the Non-Project Water. It is expressly understood by the parties that the United States is only
339 providing Storage and Conveyance capacity for the Non-Project Water and does not claim any

340 interest in the acquisition or use of the Non-Project Water beyond the terms specifically set forth
341 in this Contract.

342 (b) The Contracting Officer makes no representations as to the accuracy of the
343 description or of the validity of the Contractor's asserted rights to the Non-Project Water
344 described in Exhibit C.

345 (c) No sale, transfer, or exchange of Non-Project Water Stored and/or
346 Conveyed under this Contract may take place without the prior written approval of the
347 Contracting Officer.

348 WATER CONSERVATION

349 11. (a) Prior to the delivery of water provided from or Conveyed through
350 federally constructed or federally financed facilities pursuant to this Contract, the Contractor
351 shall develop a water conservation plan, as required by subsection 210(b) of the Reclamation
352 Reform Act of 1982 and 43 C.F.R. 427.1 (Water Conservation Rules and Regulations).

353 (b) The parties hereto acknowledge and agree that pursuant to the Water
354 Service Contract, the Contractor has implemented an effective water conservation plan/program
355 that has been approved by the Contracting Officer. Said water conservation plan/program shall
356 be deemed to meet the requirements of subdivision (a) of this Article: *Provided*, That the
357 Contractor, prior to execution of this Contract, documents to the satisfaction of the Contracting
358 Officer that the quantity of Non-Project Water to be Stored and/or Conveyed pursuant to this
359 Contract has been included into its approved water conservation plan/program and that all Non-
360 Project Water shall be subject to the same water conservation requirements as the Project Water
361 under the Water Service Contract.

UNITED STATES NOT LIABLE

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12. (a) The United States, its officers, agents and employees, including the Operating Non-Federal Entity, shall not be responsible for the control, care, or distribution of the Non-Project Water before it is introduced into or after it is diverted from the Project Facilities. It is specifically understood by the parties hereto that the United States is only providing Storage and Conveyance capacity for the Non-Project Water and does not claim any interest in the acquisition or use of the Non-Project Water beyond the terms specifically set forth in this Contract.

(b) The Contractor shall indemnify and hold the United States, its officers, agents and employees, including the Operating Non-Federal Entity, harmless from legal liability for damages of any nature whatsoever arising out of any actions or omissions of the Contractor, its officers, agents and employees, resulting from the Contractor's performance of this Contract, including the manner or method in which the Non-Project Water identified on Exhibit C is introduced into and diverted from the Project Facilities. The Contractor further releases the United States, its officers, agents and employees, including the Operating Non-Federal Entity, from every claim for damage to persons or property, direct or indirect, resulting from the Contracting Officer's determination of the quantity of Excess Capacity available in the Project Facilities for Storage and Conveyance of the Contractor's Non-Project Water, the determination that the Non-Project Water introduced into or released from Project Facilities must be terminated, and the elimination from Exhibit C of any source(s) of Non-Project Water. Nothing contained in this Article shall be construed as an assumption of liability by the Contractor with respect to such matters.

384 OPINIONS AND DETERMINATIONS

385 13. (a) Where the terms of this Contract provide for actions to be based upon the
386 opinion or determination of either party to this Contract, said terms shall not be construed as
387 permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or
388 determinations. Both parties, notwithstanding any other provisions of this Contract, expressly
389 reserve the right to seek relief from and appropriate adjustment for any such arbitrary, capricious,
390 or unreasonable opinion or determination. Each opinion or determination by either party shall be
391 provided in a timely manner. Nothing in subdivision (a) of this Article is intended to or shall
392 affect or alter the standard of judicial review applicable under Federal law to any opinion or
393 determination implementing a specific provision of Federal law embodied in statute or
394 regulation.

395 (b) The Contracting Officer shall have the right to make determinations
396 necessary to administer this Contract that are consistent with the provisions of this Contract, the
397 laws of the United States and the State of California, and the rules and regulations promulgated
398 by the Secretary. Such determinations shall be made in consultation with the Contractor to the
399 extent reasonably practicable.

400 PROTECTION OF WATER AND AIR QUALITY

401 14. (a) Project Facilities used to make available and deliver Non-Project Water to
402 the Contractor shall be operated and maintained in the most practical manner to maintain the
403 quality of the Non-Project Water at the highest level possible as determined by the Contracting
404 Officer: *Provided*, That the United States does not warrant the quality of the Non-Project Water
405 delivered to the Contractor and is under no obligation to furnish or construct water treatment
406 facilities to maintain or improve the quality of the Non-Project Water delivered to the Contractor.

407 (b) The Contractor shall comply with all applicable water and air pollution
408 laws and regulations of the United States and the State of California; and shall obtain all required
409 permits or licenses from the appropriate Federal, State, or local authorities necessary for the
410 delivery of Non-Project Water by the Contractor; and shall be responsible for compliance with
411 all Federal, State, and local water quality standards applicable to surface and subsurface drainage
412 and/or discharges generated through the use of Project Facilities or Contractor facilities or Non-
413 Project Water provided by the Contractor within the Contractor's Boundaries.

414 (c) This Article shall not affect or alter any legal obligations of the Secretary
415 to provide drainage or other discharge services.

416 (d) The Non-Project Water introduced into the Project Facilities shall be of
417 such quality, as determined solely by the Contracting Officer, as to not significantly degrade the
418 quality of the Project water. If it is determined by the Contracting Officer that the quality of the
419 Non-Project Water from any source(s) identified in Exhibit C will significantly degrade the
420 quality of Project water in or introduced into the Project Facilities, the Contractor shall, upon
421 receipt of a written notice from the Contracting Officer, arrange for the immediate termination of
422 the introduction of Non-Project Water from such sources(s) into the Project Facilities, and
423 Exhibit C shall be modified to delete such sources(s) of Non-Project Water.

424 (e) Exhibit D identifies the minimum water quality standards for monitoring
425 the quality of water in the Canal while the Contractor's Non-Project Water is Conveyed in the
426 Project Facilities. Exhibit "D" also identifies the laboratories approved by the Contracting
427 Officer that are to be used for conducting water quality analyses. The Contractor is responsible
428 for the Annual sampling and analytical costs associated with evaluating quality of the Non-
429 Project Water. Non-Project Water introduced into Project Facilities for purposes of water quality
430 testing is considered Project water.

431 (f) At all times during the term of this Contract, the Contractor shall be in
432 compliance with the requirements of the then-current Quality Assurance Project Plan (Plan)
433 approved by the Contracting Officer to monitor Non-Project Water introduced into, Stored

434 and/or Conveyed through the Project Facilities. The Plan describes the sample collection
435 procedures, water testing methods, and data review process, including quality control/quality
436 assurance protocols, to verify analytical results.

437 (g) The Contracting Officer reserves the right to require additional analyses to ensure
438 the Non-Project Water meets the Bureau of Reclamation's water quality acceptance criteria.

439 CHARGES FOR DELINQUENT PAYMENTS

440 15. (a) The Contractor shall be subject to interest, administrative, and penalty
441 charges on delinquent payments. If a payment is not received by the due date, the Contractor
442 shall pay an interest charge on the delinquent payment for each day the payment is delinquent
443 beyond the due date. If a payment becomes 60 days delinquent, in addition to the interest charge,
444 the Contractor shall pay an administrative charge to cover additional costs of billing and
445 processing the delinquent payment. If a payment is delinquent 90 days or more, in addition to
446 the interest and administrative charges, the Contractor shall pay a penalty charge for each day the
447 payment is delinquent beyond the due date, based on the remaining balance of the payment due
448 at the rate of 6 percent per year. The Contractor shall also pay any fees incurred for debt
449 collection services associated with a delinquent payment.

450 (b) The interest charge rate shall be the greater of either the rate prescribed
451 quarterly in the Federal Register by the Department of the Treasury for application to overdue
452 payments or the interest rate of 0.5 percent per month. The interest charge rate will be
453 determined as of the due date and remain fixed for the duration of the delinquent period.

454 (c) When a partial payment on a delinquent account is received, the amount
455 received shall be applied first to the penalty charges, second to the administrative charges, third
456 to the accrued interest, and finally to the overdue payment.

457 EQUAL EMPLOYMENT OPPORTUNITY

458 16. During the performance of this Contract, the Contractor agrees as follows:

459 (a) The Contractor will not discriminate against any employee or applicant for
460 employment because of race, color, religion, sex, disability, or national origin. The Contractor
461 will take affirmative action to ensure that applicants are employed, and that employees are
462 treated during employment, without regard to their race, color, religion, sex, disability, or
463 national origin. Such action shall include, but not be limited to the following: employment,
464 upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination;
465 rates of pay or other forms of compensation; and selection for training, including apprenticeship.
466 The Contractor agrees to post in conspicuous places, available to employees and applicants for
467 employment, notices to be provided by the Contracting Officer setting forth the provisions of this
468 nondiscrimination clause.

469 (b) The Contractor will, in all solicitations or advertisements for employees
470 placed by or on behalf of the Contractor, state that all qualified applicants will receive
471 consideration for employment without regard to race, color, religion, sex, disability, or national
472 origin.

473 (c) The Contractor will send to each labor union or representative of workers
474 with which it has a collective bargaining agreement or other contract or understanding, a notice,
475 to be provided by the Contracting Officer, advising the labor union or workers' representative of
476 the Contractor's commitments under Section 202 of Executive Order 11246 of September 24,
477 1965, and shall post copies of the notice in conspicuous places available to employees and
478 applicants for employment.

479 (d) The Contractor will comply with all provisions of Executive Order No.
480 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary
481 of Labor.

482 (e) The Contractor will furnish all information and reports required by
483 Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the
484 Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and
485 accounts by the Contracting Agency and the Secretary of Labor for purposes of investigation to
486 ascertain compliance with such rules, regulations, and orders.

487 (f) In the event of the Contractor's noncompliance with the nondiscrimination
488 clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be
489 canceled, terminated or suspended in whole or in part and the Contractor may be declared
490 ineligible for further Government contracts in accordance with procedures authorized in
491 Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and
492 remedies invoked as provided in Executive Order 11246 of September 24, 1965 or by rule,
493 regulation, or order of the Secretary of Labor, or as otherwise provided by law.

494 (g) The Contractor will include the provisions of paragraphs (a) through (g) in
495 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
496 Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24,
497 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor
498 will take such action with respect to any subcontract or purchase order as may be directed by the
499 Secretary of Labor as a means of enforcing such provisions, including sanctions for
500 noncompliance: *Provided, however,* That in the event the Contractor becomes involved in, or is
501 threatened with, litigation with a subcontractor or vendor as a result of such direction, the
502 Contractor may request the United States to enter into such litigation to protect the interests of
503 the United States.

504 CERTIFICATION OF NONSEGREGATED FACILITIES

505 17. The Contractor hereby certifies that it does not maintain or provide for its
506 employees any segregated facilities at any of its establishments and that it does not permit its

507 employees to perform their services at any location under its control where segregated facilities
508 are maintained. It certifies further that it will not maintain or provide for its employees any
509 segregated facilities at any of its establishments and that it will not permit its employees to
510 perform their services at any location under its control where segregated facilities are maintained.
511 The Contractor agrees that a breach of this certification is a violation of the Equal Employment
512 Opportunity clause in this Contract. As used in this certification, the term “segregated facilities”
513 means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating
514 areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking
515 fountains, recreation or entertainment areas, transportation, and housing facilities provided for
516 employees which are segregated by explicit directive or are in fact segregated on the basis of
517 race, creed, color, or national origin, because of habit, local custom, disability, or otherwise. The
518 Contractor further agrees that (except where it has obtained identical certifications from proposed
519 subcontractors for specific time periods) it will obtain identical certifications from proposed
520 subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from
521 the provisions of the Equal Employment Opportunity clause; that it will retain such certifications
522 in its files; and that it will forward the following notice to such proposed subcontractors (except
523 where the proposed subcontractors have submitted identical certifications for specific time
524 periods):

525 NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT
526 FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES

527 A Certification of Non-segregated Facilities must be submitted prior to the
528 award of a subcontract exceeding \$10,000 which is not exempt from the
529 provisions of the Equal Employment Opportunity clause. The certification
530 may be submitted either for each subcontract or for all subcontracts during a
531 period (i.e., quarterly, semiannually, or annually). Note: The penalty for
532 making false statements in offers is prescribed in 18 U.S.C. 1001.
533

534 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

535 18. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
536 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1973 (P.L. 93-112, as amended), the
537 Age Discrimination Act of 1975 (42 U.S.C. 6101, *et seq.*), Title II of the Americans with
538 Disabilities Act of 1990 if the entity is a State or local government entity [Title III if the entity is
539 a non-government entity], and any other applicable civil rights laws, as well as with their
540 respective implementing regulations and guidelines imposed by the U.S. Department of the
541 Interior and/or Bureau of Reclamation.

542 (b) These statutes require that no person in the United States shall be excluded
543 from participation in, be denied the benefits of, or be otherwise subjected to discrimination under
544 any program or activity receiving financial assistance from the Bureau of Reclamation on the
545 grounds of race, color, national origin, disability, or age. By executing this Contract, the
546 Contractor agrees to immediately take any measures necessary to implement this obligation,
547 including permitting officials of the United States to inspect premises, programs, and documents.